

may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all liquidated damages determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the Fines, Penalty, and Forfeiture Officer who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-36; 40 FR 5146, Feb. 4, 1975; T.D. 84-18, 49 FR 1680, Jan. 13, 1984; T.D. 86-118, 51 FR 22516, June 20, 1986; T.D. 87-51, 52 FR 12152, Apr. 15, 1987; T.D. 91-71, 56 FR 40780, Aug. 16, 1991]

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

Sec.

173.0 Scope.

173.1 Authority to review for error.

173.2 Transactions which may be reviewed and corrected.

173.3 Voluntary reliquidation.

173.4 Correction of clerical error, mistake of fact, or inadvertence.

173.4a Correction of clerical error prior to liquidation.

173.5 Review of entry covering household for personal effects.

173.6 Review of entry for fraud.

AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1624.

SOURCE: T.D. 70-181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

§ 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520(c)(1), Tariff Act of 1930, as amended, the authority to review an entry of household or personal effects, and the power to reliquidate an entry on account of fraud.

§ 173.1 Authority to review for error.

Port directors have broad responsibility and authority to review transactions to ensure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79-221, 44 FR 46830, Aug. 9, 1979]

§ 173.2 Transactions which may be reviewed and corrected.

The port director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

§ 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* The port director within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, may reliquidate on his own initiative a liquidation or a reliquidation

§ 173.4

19 CFR Ch. I (4–1–98 Edition)

to correct errors in appraisal, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the port director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation shall be given in accordance with the requirements for giving notice of the original liquidation.

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct.* Even though a valid protest was not filed, the port director, upon timely application, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) *Transactions which may be corrected.* Correction pursuant to section 520(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1520(c)(1)), may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

- (1) Does not amount to an error in the construction of a law;
- (2) Is adverse to the importer; and
- (3) Is manifest from the record or established by documentary evidence.

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section shall be brought to the attention of the director of the port of entry within 1 year after the date of liquidation or exaction. The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of draw-

back (see §§181.50(b) and 191.81(b) of this chapter).

(d) *“Liquidation” includes reliquidation.* “Liquidation” when used in section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), and in this section, includes reliquidation of an entry.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79–221, 44 FR 46830, Aug. 9, 1979; T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

EFFECTIVE DATE NOTE: By T.D. 98–16, 63 FR 11005, Mar. 5, 1998, §173.4 was amended by adding a sentence to the end of paragraph (c), effective Apr. 6, 1998.

§ 173.4a Correction of clerical error prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), the port director may, prior to liquidation of an entry, take appropriate action to correct a clerical error that resulted in the deposit or payment of excess duties, fees, charges, or exactions.

[T.D. 85–123, 50 FR 29957, July 23, 1985]

§ 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the port director even though a timely protest was not filed if an application for refund is filed with the port director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the port director has authority to grant. Where the port director has no authority to grant the waiver, the application shall be referred to the Commissioner of Customs.

§ 173.6 Review of entry for fraud.

The port director may review any entry in which fraud is suspected. Where probable cause to believe there is fraud in the case is found by the port director, he may reliquidate an entry within 2 years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.